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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212950
Party	Plaintiff McDonald's Corporation
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Submission	Motion to Suspend for Settlement Discussions
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Date	04/26/2016
Attachments	2016-04-26 Consent Motio to Suspend for 30 days.pdf(15190 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

McDONALD’S CORPORATION,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91212950
	)	
McFit GmbH,	)	
	)	
Applicant.	)	

**CONSENTED MOTION FOR SUSPENSION FOR SETTLEMENT**

Pursuant to Rule 510.03(a) of the Trademark Trial and Appeal Board Manual of Practice and 37 C.F.R. § 2.117(c), Opposer, McDonald’s Corporation (“McDonald’s”), with the consent of Applicant, McFit, GmbH (“McFit”), a company organized under the laws of Germany, hereby moves the Board for an Order suspending this proceeding for thirty (30) days to allow the parties to finalize a Settlement Agreement that will resolve the proceeding. The parties believe that they have agreed to settlement terms in principal and believe that they will have an executed final settlement agreement within the next few weeks thereby negating the need to incur further expense litigating this case. In support of this Motion, Opposer states:

1. On February 1, 2016 the Board granted a consented motion to suspend the proceedings due to pending settlement negotiations. In that Order, the Board held that if the parties requested any further extension or suspension, the parties must report to the Board on the progress of discovery and settlement negotiations, as well as outstanding issues. Per the Board’s Order, a recitation of the parties’ progress regarding discovery, settlement issues resolved and issues yet to be resolved and an expected timetable for resolution follows.

3. On April 25, 2014 Opposer filed a Motion to Consolidate these proceedings, and the Board granted that motion on May 5, 2014.

4. Discovery opened in June of 2014. Both parties served Initial Disclosures and both parties have exchanged written discovery requests and responses thereto.

5. On August 12, 2014, Applicant withdrew Application No. 79111490, with Opposer's consent, thereby narrowing the scope of the Opposition. (Dkt. 9.)

6. On October 1, 2015, the parties sought, and were subsequently granted, an extension of time to provide sufficient time to complete discovery. (Dkt. 15, 16.)

7. On January 21, 2015, Opposer filed a Motion for Leave to File an Amended Notice of Opposition ("Motion to Amend")(Dkt. 17.) While that motion was pending, the parties sought an additional extension of the discovery schedule. (Dkt. 18.) On March 19, 2015, the Board denied the Motion to Amend, but granted the requested extension. (Dkt. 19.)

8. On April 22, 2015, the Board issued an order dismissing the Opposition to the Class 32 goods in Application Serial No. 79129412 on the basis that this class had been deleted from the International Registration that formed the basis for the request for extension of protection prior to the institution of the Opposition. (Dkt. 20.)

9. Thereafter, the parties continued to work to resolve certain discovery issues and concurrently engaged in settlement negotiations.

10. The parties sought additional extensions of the discovery schedule on June 1, 2015 and August 26, 2015, which were granted. (Dkt. 21-24.)

11. On October 14, 2015, Applicant proposed a framework for settlement to Opposer. To provide the parties the ability to discuss the proposed settlement terms without incurring additional expenses related to discovery, the parties filed stipulations requesting suspension of

the proceedings on October 16, 2015 and January 26, 2016. (Dkt. 25, 27), which were granted by the Board. (Dkt. 26, 28).

12. The parties believe that they have now agreed in principal to the terms of a settlement agreement that will resolve all issues in the proceeding and result in the dismissal of the proceeding.

13. On April 26, 2016, Opposer's counsel sent Applicant's counsel a client-approved settlement agreement for review and approval by Applicant.

14. Opposer's counsel believes that the parties will be able to complete execution and filing of the agreement, including dismissal of the proceeding within the next two to three weeks. Accordingly, the parties believe that the requested 30 day suspension will provide the parties with adequate time to implement a final resolution of this matter.

15. If for some reason the settlement agreement is not executed, outstanding discovery, including expert disclosures along with additional document production and depositions will need to be completed.

16. Based on the parties' good faith agreement to a settlement in principal, counsel for the parties believe that good cause exists for a 30 day suspension to allow the parties time to execute the Settlement Agreement; and, in the absence of a successful settlement, to complete discovery.

WHEREFORE, the Parties jointly, respectfully request that the Board suspend this Opposition for thirty (30) days and extend all remaining deadlines in this Opposition for a period of thirty (30) days, to allow the parties to execute the settlement agreement and concurrently conduct discovery, and reset the deadlines as set forth below or as otherwise appropriate.

Expert Disclosures Due	05/25/2016
Discovery Closes	06/25/2016
Plaintiff's Pretrial Disclosures	08/09/2016
Plaintiff's 30-day Trial Period Ends	09/23/2016
Defendant's Pretrial Disclosures	10/07/2016
Defendant's 30-day Trial Period Ends	11/22/2016
Plaintiff's Rebuttal Disclosures	12/06/2016
Plaintiff's 15-day Rebuttal Period Ends	01/06/2017

Respectfully submitted,

Dated: April 26, 2016

/Lawrence E. James, Jr./  
 One of the Attorneys for Opposer,  
 McDonald's Corporation

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Dated: April 26, 2016

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**CERTIFICATE OF SERVICE**

I, Lawrence E. James, Jr., an attorney, state that I served a true and correct copy of  
*Consented Motion for Suspension for Settlement* upon Counsel for Applicant:

Stacey C. Friends  
Ruberto, Israel & Weiner, PC  
255 State Street, 7<sup>th</sup> Floor  
Boston, Massachusetts 02109

via First Class U.S. Mail on April 26, 2016, and a courtesy copy via email.

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/Lawrence E. James, Jr./  
Lawrence E. James, Jr.